

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

Case No. 11-20220

v

Honorable Thomas L. Ludington

DEHAVEN LAPRIEST HOGG,

Defendant-Petitioner.

**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING
PETITIONER'S MOTION TO VACATE SENTENCE, DENYING CERTIFICATE OF
APPEALABILITY, AND DENYING *IN FORMA PAUPERIS* STATUS ON APPEAL**

On December 12, 2011, a jury convicted Petitioner Dehaven Hogg on four counts of selling cocaine base in violation of 21 U.S.C. § 841(a)(1). ECF No. 21. After the Sixth Circuit denied his direct appeal, Hogg filed a motion to vacate his sentence under 28 U.S.C. § 2255 on May 5, 2014. ECF No. 42.

I

On September 9, 2014, Magistrate Judge Patricia T. Morris issued a report recommending that Hogg's motion to vacate be denied. Judge Morris concluded that Hogg's claims were either meritless or waived. Rep. & Rec. 6-11. In addition, Judge Morris determined that an evidentiary hearing would not be warranted because there is no material factual dispute. *Id.* at 12.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record.

Thomas v. Arn, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

II

Before Hogg may appeal this Court's dispositive decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying that standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Id.* at 336-37. "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. foll. § 2254.

Hogg has not made a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability is not warranted in this case. Furthermore, Hogg should not be granted leave to proceed *in forma pauperis* on appeal, as any appeal would be frivolous. *See* Fed. R. App. P. 24(a).

III

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation (ECF No. 53) is **ADOPTED**.

It is further **ORDERED** that Petitioner's Motion to Vacate Sentence under 28 U.S.C. § 2255 (ECF No. 42) is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

It is further **ORDERED** that permission to proceed *in forma pauperis* on appeal is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: October 2, 2014

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail and on Dehaven Lapriest Hogg #45889039, Big Spring Federal Correctional Institution, Inmate Mail/Parcels, 1900 Simler Avenue, Big Spring, TX 79720 by first class U.S. mail on October 2, 2014.

s/Tracy A. Jacobs
TRACY A. JACOBS